

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VERNON ERNEST MARTIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 82420-COA

FILED

NOV 17 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Vernon Ernest Martin appeals from a judgment of conviction, pursuant to a guilty plea, of attempted lewdness with a child under the age of 14 years. Second Judicial District Court, Washoe County; Egan K. Walker, Judge.

Martin's then 18-year-old granddaughter, M.C., informed her father that Martin sexually assaulted her on multiple occasions when she was between three and six years old.¹ The following day, M.C.'s father called Martin, and Martin ultimately admitted wrongdoing and apologized for what he did.² A third party recorded this phone call. A detective conducted a telephonic interview with M.C., who described the various instances of sexual abuse in detail. Martin pleaded guilty to one count of attempted lewdness with a child under the age of 14 years. Pursuant to the guilty plea agreement, both the State and Martin were free to argue for an appropriate sentence. At sentencing, Martin asked the district court to impose a term of probation, while the State asked the district court to

¹We do not recount the facts except as necessary to our disposition.

²Martin has repeatedly denied having any memory of the sexual assaults but asserted that M.C. does not lie and that if she says he sexually assaulted her, he did.

sentence Martin to the maximum prison term of 96 to 240 months. The district court ultimately sentenced Martin to the maximum prison term.

On appeal, Martin argues that (1) the district court abused its discretion and violated his Fifth, Sixth, and Fourteenth Amendment right to due process and a fair sentencing hearing when it based its sentencing decision on Martin not fully admitting responsibility or guilt; (2) the prosecutor improperly presented herself at the sentencing hearing as an expert witness on victims of child sex abuse and psychosexual evaluation ratings; (3) the district court improperly considered evidence of inflammatory and prejudicial uncharged misconduct at sentencing; and (4) the accumulation of plain errors deprived Martin of due process and a fundamentally fair sentencing hearing. We disagree and affirm.

Martin failed to demonstrate plain error

Martin waived his first three arguments because he did not assert them during the proceedings below. *See Jeremias v. State*, 134 Nev. 46, 50, 412 P.3d 43, 48 (2018) (“The failure to preserve an error . . . forfeits the right to assert it on appeal.”). Nor does he argue the elements of plain error on appeal. Therefore, we need not consider his arguments. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (stating that contentions not supported by relevant authority and cogent argument “need not be addressed by this court”). Furthermore, even if we considered Martin’s claims they would still fail because he does not satisfy the plain-error standard of review on appeal. We will only reverse a forfeited error when an appellant “demonstrate[s] that: (1) there was an error; (2) the error is plain, meaning that it is clear under current law from a casual inspection of the record; and (3) the error affected the defendant’s substantial rights.” *Id.* (internal quotation marks omitted). “[A] plain error affects [his] substantial rights when it causes actual prejudice or a miscarriage of justice


(defined as a 'grossly unfair' outcome)." *Jeremias*, 134 Nev. at 41, 412 P.3d at 49. An appellant bears the burden of demonstrating that he or she was prejudiced by the plain error. *See Miller v. State*, 121 Nev. 92, 99, 110 P.3d 53 (2005). Martin fails to demonstrate any clear error under current law from a casual inspection of the record, or that he was actually prejudiced by any such error resulting in a grossly unfair outcome. Therefore, we conclude that Martin cannot demonstrate reversible plain error.

No cumulative error occurred

Finally, Martin claims that the cumulative effect of errors below deprived him of his right to due process and a fair sentencing hearing. Martin has demonstrated insignificant or nonexistent errors at most and we therefore need not review this claim. *See Pascua v. State*, 122 Nev. 1001, 1008 n.16, 145 P.3d 1031, 1035 n.16 (2006) (noting reviewing courts need not perform cumulative review if appellant shows nothing more than "insignificant or nonexistent" errors).

Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Egan K. Walker, District Judge
Richard F. Cornell
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk